

Senate Bill No. 1506

CHAPTER 617

An act to add and repeal Section 653aa of the Penal Code, relating to Internet piracy.

[Approved by Governor September 21, 2004. Filed
with Secretary of State September 21, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1506, Murray. Internet piracy.

Existing federal law, through copyright, provides authors of original works of authorship, as defined, with certain rights and protections. Existing federal law generally gives the owner of the copyright the right to reproduce the work in copies or phonorecords and the right to distribute copies or phonorecords of the work to the public. Existing federal law limits the liability of an Internet service provider for copyright infringement for transmitting material under specified conditions. Existing law also provides for the forfeiture and destruction of articles upon which sounds or images can be stored, and electronic and other devices used in reproducing those articles, in connection with a violation of provisions prohibiting misappropriation of recorded music, sounds of a live performance, or an audiovisual works, as specified.

This bill would provide that it is a crime, punishable by a fine not exceeding \$2,500, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment for a person who is located in California, who knows that a particular recording or audiovisual work is commercial, to knowingly electronically disseminate all or substantially all of that commercial recording or audiovisual work to more than 10 other people without disclosing his or her e-mail address, and the title of the recording or audiovisual work. This bill would provide that a minor who violates these provisions is punishable by a fine not exceeding \$250 for a first or 2nd offense and by a fine not exceeding \$1,000, imprisonment in a county jail, or by both that fine and imprisonment for a 3rd or subsequent violation. This bill would define electronic dissemination as initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution on the Internet or other digital network, as specified. This bill would provide that these provisions would not apply to a person who electronically disseminates a commercial recording to his or her immediate family or within his or her personal network, as defined, to a situation in which the copyright owner

has explicitly given permission for or licensed the recording or audiovisual work to be freely disseminated, electronically disseminated, or disseminated by means of a cable television service. This bill would also provide that an Internet service provider does not violate or aid and abet a violation of these provisions, as specified. This bill would also provide that a court shall order the deletion or destruction of any electronic file containing a commercial recording or audiovisual work, the dissemination of which was the basis of the violation.

Because this bill would create a new crime, it would impose a state-mandated local program.

This bill would provide that its provisions would become inoperative on January 1, 2010, unless a later enacted statute deletes or extends that date.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 653aa is added to the Penal Code, to read:

653aa. (a) Any person, except a minor, who is located in California, who, knowing that a particular recording or audiovisual work is commercial, knowingly electronically disseminates all or substantially all of that commercial recording or audiovisual work to more than 10 other people without disclosing his or her e-mail address, and the title of the recording or audiovisual work is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

(b) Any minor who violates subdivision (a) is punishable by a fine not exceeding two hundred fifty dollars (\$250). Any minor who commits a third or subsequent violation of subdivision (a) is punishable by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed one year, or by both that imprisonment and fine.

(c) Subdivisions (a) and (b) do not apply:

(1) To a person who electronically disseminates a commercial recording or audiovisual work to his or her immediate family, or within his or her personal network, defined as a restricted access network



controlled by and accessible to only that person or people in his or her immediate household.

(2) If the copyright owner, or a person acting under the authority of the copyright owner, of a commercial recording or audiovisual work has explicitly given permission for all or substantially all of that recording or audiovisual work to be freely disseminated electronically by or to anyone without limitation.

(3) To a person who has been licensed either by the copyright owner or a person acting under the authority of the copyright owner to disseminate electronically all or substantially all of a commercial audiovisual work or recording.

(4) To the licensed electronic dissemination of a commercial audiovisual work or recording by means of a cable television service offered over a cable system or direct to home satellite service as defined in Title 47 of the United States Code.

(d) Nothing in this section shall restrict the copyright owner from disseminating his or her own copyrighted material.

(e) Upon conviction for a violation of this section, in addition to the penalty prescribed, the court shall order the permanent deletion or destruction of any electronic file containing a commercial recording or audiovisual work, the dissemination of which was the basis of the violation. This subdivision shall not apply to the copyright owner or to a person acting under the authority of the copyright owner.

(f) An Internet service provider does not violate, and does not aid and abet a violation of subdivision (a), and subdivision (a) shall not be enforced against an Internet service provider, to the extent that the Internet service provider enables a user of its service to electronically disseminate an audiovisual work or sound recording, if the Internet service provider maintains its valid e-mail address or other means of electronic notification on its Web site in a location that is accessible to the public.

For the purposes of this section, “Internet service provider” means an entity, to the extent that the entity is transmitting, routing, or providing connections for Internet communications initiated by or at the direction of another person, between or among points specified by a user, of material placed online by a user, storing or hosting that material at the direction of a user, or referring or linking users to that material.

(g) For purposes of this section:

(1) “Recording” means the electronic or physical embodiment of any recorded images, sounds, or images and sounds, but does not include audiovisual works or sounds accompanying audiovisual works.

(2) “Audiovisual work” means the electronic or physical embodiment of motion pictures, television programs, video or computer



games, or other audiovisual presentations that consist of related images that are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, or a computer program, software, or system, as defined in Section 502, together with accompanying sounds, if any.

(3) “Commercial recording or audiovisual work” means a recording or audiovisual work whose copyright owner, or assignee, authorized agent, or licensee, has made or intends to make available for sale, rental, or for performance or exhibition to the public under license, but does not include an excerpt consisting of less than substantially all of a recording or audiovisual work. A recording or audiovisual work may be commercial regardless of whether the person who electronically disseminates it seeks commercial advantage or private financial gain from that dissemination.

(4) “Electronic dissemination” means initiating a transmission of, making available, or otherwise offering, a commercial recording or audiovisual work for distribution on the Internet or other digital network, regardless of whether someone else had previously electronically disseminated the same commercial recording or audiovisual work.

(5) “E-mail address” means a valid e-mail address, or the valid e-mail address of the holder of the account from which the dissemination took place.

(6) “Disclosing” means providing information in, attached to, or discernable or available in or through the process of disseminating or obtaining a commercial recording or audiovisual work in a manner that is accessible by any person engaged in disseminating or receiving the commercial recording or audiovisual work.

(h) Nothing in this section shall preclude prosecution under any other provision of law.

(i) This section shall become inoperative on January 1, 2010, unless a later enacted statute deletes or extends that date.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or



changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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